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Coalition Of Automobile Retailers, Inc.

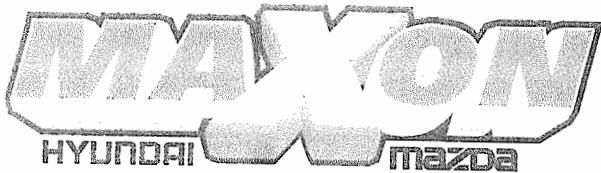
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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NEW JERSEY COALITION OF :  
AUTOMOTIVE RETAILERS, : Civil Action No. 3:18-cv-14563  
INC., a non-profit New Jersey : (BRM)(TJB)  
Corporation, :  
: Plaintiff, :  
: : DECLARATION OF MICHAEL  
v. : : J. CIASULLI IN OPPOSITION  
: : TO MAZDA MOTOR OF  
MAZDA MOTOR OF AMERICA, : AMERICA, INC.'S MOTION TO  
INC., : DISMISS  
: Defendant. :  
-----X

I, MICHAEL J. CIASULLI, of full age, hereby declare as follows:

1. I am the owner of Maxon Auto Enterprises d/b/a Maxon Mazda (“Maxon Mazda”). I make this Declaration in opposition to the motion to dismiss filed by defendant Mazda Motor of America, Inc. (“Mazda”). I have personal knowledge of the facts stated herein.

## **EXHIBIT A**



ALL MAKES OF QUALITY USED CARS & TRUCKS  
2329 Route 22 West • Union, NJ 07083  
1-800-YES-MAXON • TEL.: 908-851-5500

June 21, 2018

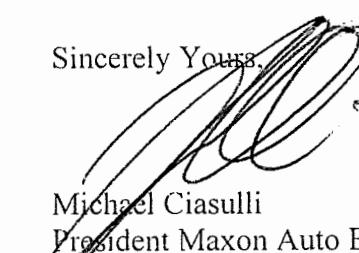
Mr. Tom Donnelly  
VP Retail Operations  
Mazda North American Operations  
200 Spectrum Center Drive  
Irvine CA 92618

RE: Changes to MBEP 2.0  
Sent Email and Overnight

Dear Mr. Donnelly:

In connection with the above referenced matter, and specifically in response to the May 29th Mazda Dealer Email which introduces "Changes to MBEP 2.0 Coming July 3, 2018" (Mazda Brand Experience Program) and requires I "acknowledge the new program by July 2nd to be eligible for July earnings under the new MBEP program" Please be advised that by my "clicking the link" at the bottom of the message shall **NOT** be construed as a waiver of any of my rights and remedies under the New Jersey State Franchise Practices Act (the "FPA").

Sincerely Yours,

  
Michael Ciasulli  
President Maxon Auto Enterprises  
DBA, Maxon Mazda 51492

CC. Brian Nash  
Northeast Regional Manager  
Mazda North American Operations  
200 Somerset Corporate Blvd. Suite 3000  
Bridgewater, NJ 08807

Charles Cappelli  
District Sales Manager  
Mazda North American Operations  
200 Somerset Corporate Blvd. Suite 3000  
Bridgewater, NJ 08807

Mr. Vince Cerza  
Sr. Mgmt & Field Ops & Dealer Affairs  
Mazda North American Operations  
200 Spectrum Center Drive  
Irvine, CA 92618

Theodore E. Schiller, Esq  
Schiller, Pittenger & Galvin, P.C  
1771 Front Street  
Scotch Plains NJ 07076

2. Maxon Mazda is a Mazda dealership located at 2329 US-22, Union, New Jersey 07083. I was awarded this Mazda franchise and have now owned this Mazda franchise for approximately twenty-five (25) years.

3. Maxon Mazda was a member of the New Jersey Coalition of Automobile Retailers, Inc. (“NJ CAR”) at the time I was awarded this Mazda franchise, and has since remained a member of NJ CAR.

4. On or about May 29, 2018, I received an email from Mazda advising Maxon Mazda and all other Mazda dealers that Mazda would be implementing the Mazda Brand Experience Program 2.0 (“MBEP”) effective July 3, 2018.

5. Out of an initial concern that the MBEP may violate Maxon Mazda’s rights as a franchisee under the New Jersey Franchise Practices Act (“FPA”), on June 21, 2018, I sent a letter to Mazda acknowledging that the MBEP was being implemented while reserving all of Maxon Mazda’s rights and remedies under the FPA. Attached hereto as Exhibit A is a true and correct copy of my letter to Mazda dated June 21, 2018.

6. Maxon Mazda is presently designated by Mazda as a Dual dealer. Maxon Mazda’s facility is not exclusive to Mazda, but rather Maxon Mazda also sells vehicles manufactured by Hyundai out of its facility. As a Dual

dealer, Maxon Mazda does not qualify for any portion of the 4.5% brand commitment element discount or bonus of the MBEP.

7. As a result, since the implementation of the MBEP on July 3, 2018, Maxon Mazda has already lost out in excess of \$250,000 in discount or bonus payments and on the opportunity to compete for sales with qualifying dealers by lowering prices based on receipt of those discounts or bonuses.

8. In order to construct an exclusive Mazda facility and qualify for at least a portion of the 4.5% brand commitment element discount or bonus, Maxon Mazda would need to first acquire property to satisfy Mazda's facility requirements (which may not even be available to buy) and then undertake the construction of a much larger facility.

9. Maxon Mazda would need to spend approximately \$10-12 million to take these extraordinary actions, monies that simply are not available to Maxon Mazda at this time. The expenditure or borrowing of such large sums of money would place an undue hardship and huge financial risk on Maxon Mazda going forward.

10. Additionally, Maxon Mazda would not make a reasonable return on such an investment by taking such action because it would not generate profits from additional sales and recoup discounts or bonuses in an amount even approaching \$10-12 million. Mazda expressly states in the MBEP that it is only

guaranteeing the payment of discounts or bonuses for a four-year period until the final sales close for June 2022. It is not feasible for Maxon Mazda to take out a 20-year loan for \$10-12 million on the basis that Mazda will pay discounts or bonuses in a far lesser amount for only the next four years.

11. Mazda never provided Maxon Mazda with any justification for making the modifications necessary to qualify for any portion of the 4.5% brand commitment element discount or bonus.

12. Shortly after Mazda introduced the MBEP, I contacted James Appleton, the President of NJ CAR, and informed him of the upcoming implementation of the MBEP.

13. I also attended a meeting with Mr. Appleton and other Mazda dealers where I voiced my concern that the MBEP violated Maxon Mazda's rights under the FPA and would significantly impact its business and hamper its ability to fairly compete.

14. From July 2018 to September 2018, Mazda conveyed a few offers to me to buy out my ownership interest in the Mazda franchise.

15. During my discussions with Mazda, Brian Nash, a Regional General Manager of Mazda, discouraged me from making, considering or even looking into the possibility of any facility modifications as Mazda believed that Maxon Mazda's underperformance did not warrant its participation in the MBEP.

16. Mr. Nash also emphasized to me that the implementation of the MBEP would place Maxon Mazda at a competitive disadvantage with other Mazda dealers in New Jersey given the fact of Maxon Mazda's current facility configuration. Mr. Nash remarked to me that the MBEP would not go away, Maxon Mazda would be dealing with extreme "headwinds" during the course of the MBEP, and with time, it would become more and more difficult for Maxon Mazda to do business.

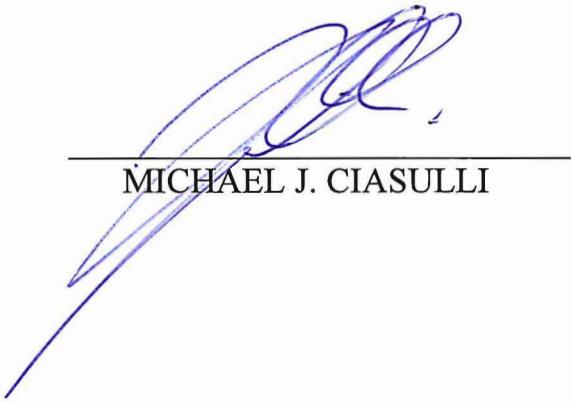
17. Mazda and Maxon Mazda ultimately were unable to agree upon terms for the purchase of the Mazda franchise.

18. The implementation of the MBEP not only is harmful to Maxon Mazda, but more significantly, is harmful to New Jersey consumers. Maxon Mazda is forced to sell Mazda vehicles at higher prices to customers in Union and surrounding markets because it is not receiving any brand commitment element discount or bonus under the MBEP. Maxon Mazda's existing customer base, and prospective customers in the area of its facility, are being forced to either pay higher prices to Maxon Mazda or travel great distances to spend less money at competing dealerships.

19. Moreover, if Maxon Mazda or other Mazda dealers are left unable to compete and are forced to shut down, customers will be left with fewer

options to purchase Mazda vehicles, have their vehicles serviced and to address any safety recalls.

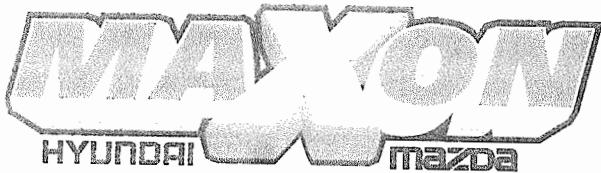
Pursuant to 28 U.S.C. § 1746, I hereby certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.



MICHAEL J. CIASULLI

Dated: November 30, 2018

## **EXHIBIT A**



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2329 Route 22 West • Union, NJ 07083  
1-800-YES-MAXON • TEL.: 908-851-5500

June 21, 2018

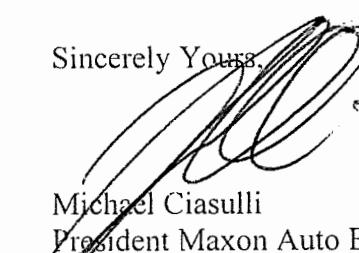
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